

**FIFTH AMENDMENT TO
LEASE AGREEMENT**

**BUNKER HILLS GOLF COURSE
RESTAURANT AND CATERING PROVIDER**

THIS FIFTH AMENDMENT TO LEASE AGREEMENT ("Fifth Amendment") made and entered into this _____ day of November, 2013, by and between the City of Coon Rapids, a Minnesota municipal corporation, hereinafter referred to as "City", and Potluck Catering, Inc., d/b/a Town and Country Caterers, a Minnesota corporation, hereinafter referred to as "Tenant."

WITNESSETH:

The City and Tenant entered into a Commercial Lease Agreement dated September 21, 2010 ("the Lease"), concerning the restaurant, banquet facility, and bar and grill portions of the clubhouse at the Bunker Hills Golf Course ("the Golf Course"). The Tenant is now conducting business at the Golf Course doing business as "the Harvest Grill."

The City and Tenant entered into a First Amendment to Commercial Lease Agreement dated December 18, 2011 ("the First Amendment") modifying certain provisions of the Lease related to the impact of the reconstruction of County Road 14/Main Street and the closure of the road as part of that project. The City and Tenant entered into a Second Amendment to Commercial Lease Agreement dated January 17, 2012 ("the Second Amendment") modifying certain provisions of the First Amendment as part of the ongoing negotiations related to the impact of the County Road 14/Main Street road closure. The City and Tenant entered into the Third Amendment to the Commercial Lease dated February 8, 2012 modifying the certain provisions for the 2012 lease year to allow the Tenant to remain open while maintain the service level expectations of the City. The City and Tenant entered into the Fourth Amendment allowing Tenant to sublease space in the Premise to a third party for charitable gambling

Tenant has come forth to the City requesting the ability to make weekly payments of rent and other expenses and to include Tenant's share of signage into current repayment schedule. This Fifth Amendment seeks to show the City's and the Tenant's good faith efforts to a successful long-term clubhouse relationship as vital to the public interest in the City of Coon Rapids.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged, the Lease, is hereby amended as follows:

1. **DEFINITIONS.** All capitalized terms, not otherwise separately defined herein, shall have the meanings ascribed to them in the Lease and/or the Amendments to the Lease.

2. **2013 RENT.** Paragraph 5 of the Lease is hereby modified to reflect that Tenant shall pay to the City the remaining 2013 rent (October-December) including base rent, utilities, taxes, and incentive rent on a weekly basis. Each payment shall be made on Monday and the first five payments in total shall equal the October, November rent and delinquent utilities. The weekly payments will commence on Monday November 4. The first payment shall in be in the amount of \$14,157.61. The remaining four payments shall be in the amount of \$16,434.61 and due on November 11, November 18, November 25 and December 2. Tenant shall pay December's rent including base rent, utilities, taxes, and incentive rent on December 2, 2013 and continue monthly rental payments as described in Paragraph 5 of the Lease. Per the Lease, all rent is due on the first of each of month and no grace period exist for late payments.

3. **PAYMENT METHOD.** For the length of the remaining Lease, Tenant shall pay all payments owed including rent, utilities, taxes and incentive rent in the form of a Cashier's Check or Certified Check.

4. **ARREARS REPAYMENT.** Tenant currently is paying past due rent and utilities to the City pursuant to Paragraph 4 of the Third Amendment to the Lease. City agrees that additional amount owed of \$20,000 for signage will be added to the existing principal balance on January 1, 2014. Tenant shall continue to re-pay the delinquency on a monthly basis as shown on the amortization schedule attached to this Fifth Amendment as Exhibit A5-1. However, if Tenant's gross sales or total income, as measured by Tenant's gross receipts reported to the State of Minnesota for sales tax purposes, exceed Tenant's monthly expenses including rent, as measured by the financial reporting requirements in paragraph 6 of this Fifth Amendment, Tenant shall pay such excess to the City. Any such excess received by the City shall first be credited by the City to the Delinquency and then shall be retained by the City as incentive rent. Tenant will pay any delinquent personal property tax to Anoka County by no later than December 19, 2013.

5. **PERSONAL PROPERTY TAX PAYMENT.** Tenant will pay \$6,250.00 per month to the City until such time as Tenant's yearly personal property tax obligation has been reached. The City shall hold said amounts to pay Anoka County when due for Tenant's personal property tax account as required in paragraph 22 of the Lease. All other terms and conditions of paragraph 22 of the Lease shall remain in full force and effect.

6. **FINANCIAL OVERSIGHT.** The City may enter into a contract with a consultant experienced in the operational and financial management of a destination restaurant to advise the City. The purpose of the consultant will be to advise the City on Tenant's operations and ensure that Tenant is meeting its operational and financial obligations to the City. Tenant and Tenant's on-site manager shall meet with the consultant on a monthly basis. Tenant will fully cooperate with the consultant to review the operation of the restaurant. Tenant will provide the City with monthly financial statements for Tenant's operation, including monthly balance sheets, revenues and expenses, and any other financial information deemed necessary by the City, in a format acceptable to the City. The City may request additional information or clarification from Tenant if the City believes, in the City's discretion, that discrepancies or irregularities appear in the information provided by Tenant. If the City determines that discrepancies or irregularities exist, and the City reasonably determines that Tenant purposefully

created the discrepancies or irregularities to avoid paying the rent, the delinquency, or incentive rent as described in Lease and the Amendments, the City may terminate the lease.

7. FULL FORCE AND EFFECT. Except as expressly amended by the provisions of this Fifth Amendment, the terms and conditions contained in the Lease, the First Amendment, the Second Amendment, Third Amendment and Fourth Amendment shall continue to govern the rights and obligations of the parties and the Lease shall remain in full force and effect until and unless expressly modified by the parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Fifth Amendment as of the day and year above written.

CITY OF COON RAPIDS

By: _____
Tim Howe, Mayor

By: _____
Steve Gatlin, City Manager

POTLUCK CATERING, INC.

By: _____
Jason Hines, Owner and Operator

KB & J'S ENTERPRISES, INC.

By: _____
Jason Hines

By: _____
Kim T. Hines

CONTINUING PERSONAL GUARANTY

As additional inducement for the City to enter into this Fifth Amendment, the undersigned jointly and severally and unconditionally guarantees that the Tenant will make all payments and meet any and all debts, liabilities, and obligations of every nature or form, now existing or hereafter arising or acquired under this Fifth Amendment, the Fourth Amendment, the Third Amendment, the Second Amendment, the First Amendment, and the Lease fully and promptly. If the Tenant defaults, the undersigned will immediately be responsible for and pay all sums due under the terms of the Lease, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and this Fifth Amendment, and all amounts payable under the equipment leases. If it is necessary for the City to proceed legally to enforce this Guaranty, the undersigned expressly consents to the jurisdiction of the State of Minnesota, Tenth Judicial District, with venue in Anoka County and to pay all costs, including reasonable attorneys fees incurred in enforcement of this guaranty and waives any right to a jury trial. It is not necessary for the City to proceed against the Tenant before enforcing this guaranty.

<u>Kim T. Hines</u>	<u>X</u>	
Name of Guarantor	Signature	Dated

<u>Jason Hines</u>	<u>X</u>	
Name of Guarantor	Signature	Dated